

O/0439/26

TRADE MARKS ACT 1994

**IN THE MATTER OF APPLICATION NO. UK00004142599
BY WATERLINE LIMITED TO REGISTER:**

Riva

AS A TRADE MARK IN CLASSES 7, 11 AND 35

AND

**IN THE MATTER OF THE OPPOSITION THERETO
UNDER NO. 453574
BY STOVAX GAZCO LTD**

Background and pleadings

1. On 31 December 2024, Waterline Limited (“the Applicant”) applied to register in the UK the trade mark shown on the cover page of this decision (“the contested mark”). The contested mark was published in the Trade Marks Journal for opposition purposes on 17 January 2025 in respect of the following goods and services:

Class 7: Washing machines for laundry; Textile washing machines; Combination washing and drying machines; Domestic washing machines; Laundry washing machines incorporating a drying tumbler; and machine parts for the aforementioned; Dishwashers; Washing machines for kitchen bowls, crockery and utensils; and machine parts for the aforementioned.

Class 11: Ovens; Domestic ovens; Baking ovens; Microwave ovens; Cooking ovens; Convection ovens; Pizza ovens; Drying ovens; Electric toaster ovens; Electric oven ranges; Electric cooking ovens; Gas ovens; Induction ovens; Kitchen stoves; Stoves; Cooking stoves; Stoves for cooking; Electric cooking stoves; Gas stoves; Electric stoves; Oil stoves; Cooker hobs; Griddles [cooking appliances], Cooking hobs; Kitchen ranges; Gas ranges; Electric ranges; Gas burner ranges; Microwaves; Microwave cookers; Extraction hoods; Extraction hoods for freezers; Extraction hoods for cookers; Vapour extraction hoods; Range hoods; Exhaust hoods, Ventilation hoods; Air extractor hoods; Oven ventilation hoods; Cooker hoods; Hoods incorporating extractor fans; Extractor units [ventilation]; Fridges; Refrigerators; Freezers; Refrigerated cabinets; Freezer cabinets; Refrigerated drawers; Freezing cupboards; Refrigerated shelves; Freezer storage units; Refrigerating containers; Wine refrigerators; Electric wine coolers.

Class 35: Wholesale services relating to kitchen appliances; Retail services in relation to kitchen appliances; Wholesale services in relation to food cooking equipment; Retail services in relation to food cooking equipment.

2. On 14 April 2025, Stovax Gazco Ltd (“the Opponent”) filed a notice of opposition, partially opposing the application under sections 5(1), 5(2)(a) and 5(2)(b) of the Trade Marks Act 1994 (“the Act”). In a letter dated 29 July 2025, the Opponent withdrew the ground under section 5(2)(b) and amended the scope of its opposition. The opposed goods are:

Class 11: Kitchen stoves; Stoves; Cooking stoves; Stoves for cooking; Electric cooking stoves; Gas stoves; Electric stoves; Oil stoves.

3. The Opponent relies upon the following trade mark:

RIVA

UK registration number 910413227

Filing date: 14 November 2011

Registration date: 7 October 2012

For the purpose of these proceedings, the Opponent relies upon the goods for which the mark is registered, namely:

Class 11: Stoves for heating (but not for cooking).

4. Under Article 54 of the Withdrawal Agreement between the UK and the EU, the UK IPO created comparable UK trade marks for all right holders with an existing registered EUTM or International Registration designating the EU. As a result, the Opponent’s mark was converted into a comparable UK trade mark. Comparable UK marks are now recorded in the UK trade mark register, have the same legal

status as if they had been applied for and registered under UK law, and the original filing dates remain the same.¹

5. Given the filing date, the Opponent's mark is an earlier right, in accordance with section 6 of the Act. By virtue of its earlier filing date of 14 November 2011, the earlier right constitutes an earlier mark within the meaning of section 6(1) of the Act. As the earlier right completed its registration procedure more than five years before the filing date of the opposed contested mark, it is, in principle, subject to the use provisions set out in section 6A of the Act. However, as the Applicant did not request the Opponent provide proof of use, the Opponent can rely upon the goods it has identified without having to demonstrate use.
6. In its amended TM7, the Opponent submits that the applied for mark is identical or very closely similar to the earlier mark and that the opposed goods are identical or similar, such that there exists a likelihood of confusion on the part of the public and that the opposed part of the application should be refused. ²
7. The Applicant filed a counterstatement denying the grounds of opposition.³
8. The Applicant is not represented and the Opponent is represented by Bryers Intellectual Property Ltd.
9. The Opponent filed evidence and submissions, which are detailed below. Neither party requested a hearing nor filed written submissions in lieu of a hearing. This decision is taken following a careful perusal of the papers.

EVIDENCE AND SUBMISSIONS

10. The Opponent's evidence comes from Paula Amor, who is a UK Chartered Trade Mark Attorney at Bryers Intellectual Property Ltd, a position held since 1995. Paula Amor is responsible for the management of the Opponent's trade mark portfolio.

¹ See also Tribunal Practice Notice ("TPN") 2/2020 End of Transition Period – impact on tribunal proceedings.

² Amended form TM7 filed 14 April 2025, Q9.

³ Form TM8 and counterstatement filed 27 May 2025.

The witness statement is undated but was filed 6 August 2025 and is accompanied by four exhibits, PA-1 – PA-4. The evidence has been filed to demonstrate the identity or close similarity of the goods in question. At the same time, the Opponent filed submissions.

11. I can confirm that I have reviewed the evidence in its entirety and will refer to it later in my decision, to the extent I consider it necessary.

RELEVANCE OF EU LAW

12. The provisions of the Act relied upon in these proceedings are assimilated law, as they are derived from EU law. Although the UK has left the EU, section 6(3)(a) of the European Union (Withdrawal) Act 2018 (as amended by Schedule 2 of the Retained EU Law (Revocation and Reform) Act 2023) requires tribunals applying assimilated law to follow assimilated EU case law. That is why this decision refers to decisions of the EU courts which predate the UK's withdrawal from the EU.

DECISION

Sections 5(1), 5(2) and 5A of the Act

13. Section 5(1) of the Act states that:

“A trade mark shall not be registered if it is identical with an earlier trade mark and the goods or services for which the trade mark is applied for are identical with the goods or services for which the earlier mark is protected.”

14. Section 5(2) of the Act states that:

“(2) A trade mark shall not be registered if because-

...

(a) it is identical with an earlier trade mark and is to be registered for goods or services similar to those for which the earlier trade mark is protected, [...]

(b)

there exists a likelihood of confusion on the part of the public, which includes the likelihood of association with the earlier trade mark”.

15. “5A Where grounds for refusal of an application for registration of a trade mark exist in respect of only some of the goods or services in respect of which the trade mark is applied for, the application is to be refused in relation to those goods and services only.”

Identity of the marks

16. For a claim under section 5(1) or 5(2)(a) of the Act to succeed, the competing marks are required to be identical. Whether a mark may be considered identical to another was addressed in *S.A. Société LTJ Diffusion v. Sadas Vertbaudet SA*, Case C-291/00, where the Court of Justice of the European Union (“CJEU”) held that:

“54. [...] a sign is identical with the trade mark where it reproduces, without any modification or addition, all the elements constituting the trade mark or where, viewed as a whole, it contains differences so insignificant that they may go unnoticed by the average consumer.”

17. The marks are word only marks. The Applicant’s mark is ‘Riva’ and the Opponent’s mark is ‘RIVA’. As the marks have no additional elements or changes which affect the visual, aural or conceptual identities of the marks, and as the registration of a word-only mark protects the word itself, the marks are still considered identical, notwithstanding the difference in capitalisation.

The Principles

18. The following standard summary of the principles applicable to the assessment of the likelihood of confusion was approved by the Supreme Court in *Iconix Luxembourg Holdings SARL v Dream Pairs Europe Inc & Anor*, [2025] UKSC 25:

(a) The likelihood of confusion must be appreciated globally, taking account of all relevant factors;

(b) the matter must be judged through the eyes of the average consumer of the goods or services in question, who is deemed to be reasonably well informed and reasonably circumspect and observant, but who rarely has the chance to make direct comparisons between marks and must instead rely upon the imperfect picture of them he has kept in his mind, and whose attention varies according to the category of goods or services in question;

(c) the average consumer normally perceives a mark as a whole and does not proceed to analyse its various details;

(d) the visual, aural and conceptual similarities of the marks must normally be assessed by reference to the overall impressions created by the marks bearing in mind their distinctive and dominant components, but it is only when all other components of a complex mark are negligible that it is permissible to make the comparison solely on the basis of the dominant elements;

(e) nevertheless, the overall impression conveyed to the public by a composite trade mark may be dominated by one or more of its components;

(f) however, it is also possible that in a particular case an element corresponding to an earlier trade mark may retain an independent distinctive role in a composite mark, without necessarily constituting a dominant element of that mark;

(g) a lesser degree of similarity between the goods or services may be offset by a great degree of similarity between the marks, and vice versa; Page 8 of 20

(h) there is a greater likelihood of confusion where the earlier mark has a highly distinctive character, either per se or because of the use that has been made of it;

(i) mere association, in the strict sense that the later mark brings the earlier mark to mind, is not sufficient;

(j) the reputation of a mark does not give grounds for presuming a likelihood of confusion simply because of a likelihood of association in the strict sense;

(k) if the association between the marks creates a risk that the public might believe that the respective goods or services come from the same or economically linked undertakings, there is a likelihood of confusion.

Comparison of goods

19. In *Gérard Meric v OHIM*, Case T-133/05, the General Court (“GC”) stated that:

“In addition, the goods can be considered as identical when the goods designated by the earlier mark are included in a more general category, designated by trade mark application (Case T-388/00 *Institut für Lernsysteme v OHIM - Educational Services (ELS)* [2002] ECR II-4301, paragraph 53) or where the goods designated by the trade mark application are included in a more general category designated by the earlier mark”.

20. When making the comparison, all relevant factors relating to the goods in the specifications should be taken into account. In the judgment of the CJEU in *Canon*, Case C-39/97, the court stated at paragraph 23 that:

“In assessing the similarity of the goods or services concerned, as the French and United Kingdom Governments and the Commission have pointed out, all the relevant factors relating to those goods or services themselves should be taken into account. Those factors include, inter alia, their nature, their intended purpose and their method of use and whether they are in competition with each other or are complementary.

21. Guidance on this issue has come from Jacob J. (as he then was) in the *Treat* case, [1996] R.P.C. 281, where he identified the factors for assessing similarity as:

- (a) The respective uses of the respective goods or services;
- (b) The respective users of the respective goods or services;
- (c) The physical nature of the goods or acts of service;
- (d) The respective trade channels through which the goods or services reach the market;
- (e) In the case of self-serve consumer items, where in practice they are respectively found or likely to be found in supermarkets and, in particular, whether they are or are likely to be found on the same or different shelves;
- (f) The extent to which the respective goods or services are competitive. This inquiry may take into account how those in trade classify goods, for instance, whether market research companies, who of course act for industry, put the goods or services in the same or different sectors.

22. For the purposes of considering the issue of similarity of goods, it is permissible to consider groups of terms collectively where they are sufficiently comparable to be assessed in essentially the same way and for the same reasons.⁴

23. The goods for comparison are as follows:

Opponent's goods	Applicant's goods
Class 11:	Class 11:

⁴ *Separode Trade Mark* (BL O/399/10), per Mr Geoffrey Hobbs QC, sitting as the Appointed Person; and *BVBA Management, Training en Consultancy v. Benelux-Merkenbureau* [2007] ETMR 35, at paragraphs 30 to 38).

Stoves for heating (but not for cooking).	Kitchen stoves; Stoves; Cooking stoves; Stoves for cooking; Electric cooking stoves; Gas stoves; Electric stoves; Oil stoves.
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24. In its submissions,⁵ the Opponent submits the Applicant's goods:

"[...] are a sub-set of the goods of the Opponent's specification, Stoves for heating (but not for cooking) (the Opponent's Goods), as all the Contested Goods are stoves which may be used for heating."

"On the Meric principle, the Contested Goods are all subsumed in and part of the Opponent's wider specification. Hence, the parties' goods are identical."

"In the alternative,

- a. Stoves, gas stoves, electric stoves and oil stoves encompass the Opponent's Goods and are therefore identical to the Opponent's Goods, and*
- b. Cooking stoves, stoves for cooking and electric cooking stoves are not expressed as not being for heating and therefore encompass the Opponent's Goods, meaning the goods are identical."*

25. The Applicant submits the following:⁶

"The Opponent's specification, as stated in their registration, explicitly covers "stoves for heating (but not for cooking)". This limitation is highly material. The Applicant's goods – which include [...] cooking stoves, [...] and other cooking appliances – are designed for food preparation and kitchen installation, whereas the Opponent's products are space heating appliances used in domestic or commercial heating applications, typically in living rooms or non-kitchen areas."

⁵ Opponent's submissions filed 6 August 2025, paragraphs 6 – 8.

⁶ Applicant's counterstatement filed 27 May 2025, Paragraph 2.

Stoves.

26. The above term is a broad term that will encompass the Opponent's '*Stoves for heating (but not for cooking)*'. Accordingly, I find that these goods are identical in line with the principle set out in *Meric*.

Gas stoves; Electric stoves; Oil stoves.

27. Gas stoves, electric stoves and oil stoves are broad terms that identify the energy source of the goods without specifying their function. As such, they can include the Opponent's '*Stoves for heating (but not for cooking)*'. Therefore, the Applicant's goods will encompass the Opponent's goods, so they are identical on the principle set out in *Meric*.

Kitchen stoves; Cooking stoves; Stoves for cooking; Electric cooking stoves.

28. I understand that the Applicant's above goods are kitchen appliances designed primarily for preparing food by the application of heat, through various energy sources such as gas, electricity or solid fuel. By contrast, the Opponent's "*Stoves for heating (but not for cooking)*" are heating appliances designed specifically to generate heat for the purpose of warming a room or building and expressly exclude any cooking function. Whilst the goods differ in their intended purpose and method of use, I note that they share a common nature as heat-generating appliances and may operate using the same energy sources. The Opponent submits⁷ that as the Applicant's stoves are not expressed as 'not being for heating', they encompass the Opponent's goods. I do not agree with this submission. The Applicant's goods are either expressly limited to cooking or clearly indicate that purpose (for example, '*Kitchen stoves*'). Although a cooking/kitchen stove may, in some circumstances, warm the surrounding area, this is incidental and not its primary function. Trade channels may overlap, as both parties' goods may be supplied through specialist stove retailers or general domestic appliance outlets, albeit sold in different areas of a physical store or

⁷ Opponent's submissions dated 6 August 2025, page 2, paragraph 8.

under different categories online. There may be a general overlap in users, but the goods are not in competition with each other. I also consider that the same manufacturer may produce both cooking stoves and heating stoves. Although consumers may assume that the goods come from the same undertaking, the goods are not indispensable or important for the use of the other, therefore they are not complimentary. Accordingly, I find the goods to be similar to a low degree.

Summary

29. As section 5(1) of the Act requires that the goods at issue be identical, the opposition under this ground will fail in respect of those goods that I have found to be only similar (and not identical).

30. Accordingly, the opposition under section 5(1) succeeds in respect of the following goods only:

Class 11: *Stoves; Gas stoves; Electric stoves; Oil stoves.*

31. As the opposition under section 5(1) is only partially successful, I will now consider the global assessment in relation to the section 5(2)(a) grounds for the remaining goods.

Average consumer and the purchasing act

32. The average consumer is deemed to be reasonably well informed and reasonably observant and circumspect. For the purpose of assessing the likelihood of confusion it must be borne in mind that the average consumer's level of attention is likely to vary according to the category of goods in question: *Lloyd Schuhfabrik Meyer, Case C-342/97*.

33. In *Iconix Luxembourg Holdings SARL v Dream Pairs Europe Inc & Anor*, [2025] UKSC 25, the Supreme Court approved the comments of Arnold LJ in *Lidl Great*

Britain Ltd & Anor v Tesco Stores Ltd & Anor (Rev1) [2024] EWCA Civ 262, where he pointed out that:

- (b) Consumers who are ill-informed or careless, or consumers with specialised knowledge or who are excessively careful are excluded from consideration;
- (c) The average consumer provides a standard which enables the courts to strike a balance between the competing interests involved, such as trade mark owners, their competitors and consumers.
- (d) The average consumer is neither a single hypothetical person nor a mathematical average; assessment from the perspective of the average consumer does not involve a statistical test. There is no single meaning rule and if, having regard to the perceptions and expectations of the average consumer, the court considers that a significant proportion of the relevant public is likely to be confused, a finding of infringement may properly be made;
- (e) Assessment from the perspective of the average consumer is intended to facilitate adjudication of trade mark disputes by providing an objective criterion, by promoting consistency of assessment and by enabling courts and tribunals to determine such issues so far as possible without the need for evidence;
- (f) The average consumer's level of attention varies according to the category of goods or services in question; and
- (g) the average consumer rarely has the opportunity to make direct comparisons between trade marks (or between trade marks and signs) and must instead rely upon the imperfect picture of the trade mark they have kept in their mind.

34. The average consumer for the goods at issue will be members of the general public. The goods may be selected from general retailers selling domestic appliances or from stores that specialise in selling stoves, where they will be displayed on the shop floor. Alternatively, the goods may be purchased from

retailers' websites, after viewing images of the products online. In my view, the purchasing process will be primarily visual, though I do not discount that the aural component may play a role, for example through word-of-mouth recommendations or advice from sales assistants.

35. The goods are likely to be relatively expensive and purchased infrequently. Consumers are therefore likely to consider factors such as compatibility, energy source, efficiency, intended purpose, ease of installation and aesthetic qualities. Any associated safety concerns may also play a part in the decision process. Taking all factors into account, I find that the average consumer will pay at least a medium degree of attention during the purchasing process.

Distinctive character of the earlier mark

36. In *Lloyd Schuhfabrik Meyer*, the CJEU stated that:

“22. In determining the distinctive character of a mark and, accordingly, in assessing whether it is highly distinctive, the national court must make an overall assessment of the greater or lesser capacity of the mark to identify the goods or services for which it has been registered as coming from a particular undertaking, and thus to distinguish those goods or services from those of other undertakings (see, to that effect, judgment of 4 May 1999 in Joined Cases C-108/97 and C-109/97 *Windsurfing Chiemsee v Huber and Alternberger* [1999] ECR I-0000, paragraph 49).

23. In making that assessment, account should be taken, in particular, of the inherent characteristics of the mark, including the fact that it does or does not contain an element descriptive of the goods or services for which it has been registered, the market share held by the mark, how intensive, geographically widespread and long-standing use of the mark has been; the amount invested by the undertaking in promoting the mark, the proportion of the relevant section of the public which, because of the mark, identifies the goods or services as originating from a particular undertaking, and statements from chambers of commerce and industry or

other trade and professional associations (see *Windsurfing Chiemsee*, paragraph 51).”

37. Registered trade marks possess varying degrees of inherent distinctive character, ranging from the very low, because they are suggestive or allusive of a characteristic of the goods, to those with high inherent distinctive character, such as invented words which have no allusive qualities. The distinctive character of a mark can be enhanced by virtue of the use that has been made of it.
38. Although the distinctiveness of a mark can be enhanced by virtue of the use that has been made of it, the Opponent has not filed any evidence of use in relation to its mark. Consequently, I have only the inherent position to consider.
39. The earlier mark consists of the word “RIVA”. I refer to the Opponent’s submissions⁸ and acknowledge that whilst it is a dictionary defined term, a significant proportion of the relevant public would see it as an invented word, which has no direct or specific meaning for the goods relied upon. Accordingly, I find the earlier mark to be inherently distinctive to a high degree.

Likelihood of Confusion

40. Confusion can be direct or indirect. Direct confusion involves the average consumer mistaking one mark for the other, while indirect confusion is where the average consumer realises the marks are not the same but puts the similarity that exists between the marks and the goods down to the responsible undertakings being the same or related. There is no scientific formula to apply in determining whether there is a likelihood of confusion; rather, it is a global assessment where a number of factors need to be borne in mind. The first is the interdependency principle i.e., a lesser degree of similarity between the respective trade marks may be offset by a greater degree of similarity between the respective goods and vice versa. It is necessary for me to keep in mind the distinctive character of the earlier mark, the average consumer for the goods and the nature of the purchasing

⁸ Opponent’s submissions filed 29 July 2025, paragraph 15.

process. In doing so, I must be alive to the fact that the average consumer rarely has the opportunity to make direct comparisons between trade marks and must instead rely upon the imperfect picture of them that he has retained in his mind.

41. Earlier in the decision I found:

- the marks to be identical.
- the parties' goods to be similar to a low degree.⁹
- the earlier mark to be inherently distinctive to a high degree.
- the average consumer for the goods to be members of the general public who will select the goods primarily by visual means, although I do not discount an aural component. The average consumer will pay at least a medium degree of attention during the purchasing process.

42. Bearing all of the above factors in mind, I find that there is a likelihood of confusion.

This is because the marks are identical, meaning there is nothing to assist the average consumer in distinguishing between them, and even in the context of goods which are similar to a low degree, when bearing in mind the interdependency principle, I find it likely that the average consumer will confuse them. I find this to be the case especially considering the high level of distinctiveness, and in circumstances where the average consumer is paying at least a medium degree of attention during the purchasing process.

CONCLUSION

43. For the goods I have found to be identical, the opposition succeeds under section 5(1); for those goods with which I found similarity, the opposition succeeds under section 5(2)(a).

44. Subject to any appeal, the application will be refused for the following goods:

⁹ In respect of the remaining goods I am considering under section 5(2)(a).

Class 11: Kitchen stoves; Stoves; Cooking stoves; Stoves for cooking; Electric cooking stoves; Gas stoves; Electric stoves; Oil stoves.

45. The application will proceed to registration for the unopposed goods and services, namely:

Class 7: Washing machines for laundry; Textile washing machines; Combination washing and drying machines; Domestic washing machines; Laundry washing machines incorporating a drying tumbler; and machine parts for the aforementioned; Dishwashers; Washing machines for kitchen bowls, crockery and utensils; and machine parts for the aforementioned.

Class 11: Ovens; Domestic ovens; Baking ovens; Microwave ovens; Cooking ovens; Convection ovens; Pizza ovens; Drying ovens; Electric toaster ovens; Electric oven ranges; Electric cooking ovens; Gas ovens; Induction ovens; Cooker hobs; Griddles [cooking appliances], Cooking hobs; Kitchen ranges; Gas ranges; Electric ranges; Gas burner ranges; Microwaves; Microwave cookers; Extraction hoods; Extraction hoods for freezers; Extraction hoods for cookers; Vapour extraction hoods; Range hoods; Exhaust hoods, Ventilation hoods; Air extractor hoods; Oven ventilation hoods; Cooker hoods; Hoods incorporating extractor fans; Extractor units [ventilation]; Fridges; Refrigerators; Freezers; Refrigerated cabinets; Freezer cabinets; Refrigerated drawers; Freezing cupboards; Refrigerated shelves; Freezer storage units; Refrigerating containers; Wine refrigerators; Electric wine coolers.

Class 35: Wholesale services relating to kitchen appliances; Retail services in relation to kitchen appliances; Wholesale services in relation to food cooking equipment; Retail services in relation to food cooking equipment.

COSTS

46. The Opponent has been successful and is therefore entitled to a contribution towards its costs, based upon the scale published in Tribunal Practice Notice

1/2023.¹⁰ I award the Opponent the sum of £650 as a contribution towards its costs. The sum is calculated as follows:

Preparing a notice of opposition & considering the other sides statement £250

Official fee £100

Preparing evidence and submissions £300¹¹

Total: £650

47. I therefore order Waterline Limited to pay Stovax Gazco Ltd the sum of £650. This sum is to be paid within 21 days of the expiry of the appeal period or, if there is an appeal, within 21 days of the conclusion of the appeal proceedings.

Dated this 22nd of May 2026

**Joanne Roberts
For the Registrar**

¹⁰ As the proceedings were commenced after 01 February 2023

¹¹ I have reduced this to below the scale minimum as the evidence and submissions were light (totalling 12 pages) and the evidence did not assist me in my decision.